who is under the employ of a firm of practitioners practising and maintaining an office in a State is a practitioner for the purpose of the sub-section and consequently for the purpose of Part IV of the Ordinance. I so determine accordingly.

I do not think any useful purpose will be served by making a declaration sought in the second part of the application. The annual general meeting of 26th January, 1969, is an event of the past which cannot be revived or recaptured by the declaration sought. In any case the ruling does not effectively operate to deprive the applicants of their right to vote, and by the ruling there should have been nothing to prevent them from voting during the meeting.

Order accordingly.

Solicitors: *Skrine & Co.; L. A. J. Smith.*

WONG AH GAN v. CHAN SWEI YUEH & ANOR.

[C.A. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah & Chua JJ.) February 9, 1970]

[Singapore — F.C.C.A. No. Y24 of 1969]

Negligence — Road accident — Motor cyclist not using crash helmet — Deep-seated brain damage — Damages.

Damages — Head — Brain injury — Deep-seated brain damage — Prospective earning — Loss of.

Road Traffic — Accident — Whether there is a duty to minimise effect of injury.

The first respondent was involved in a collision with a motor car driven by the appellant. At the time of the accident the first respondent was riding a motor cycle and was not wearing a crash helmet, and as a result he suffered deep-seated brain damage. The learned trial judge held that the appellant was negligent and awarded $115,000 as damages. On appeal it was argued: (i) the learned trial judge should have found as a matter of law that there was a duty on the first respondent to mitigate the damages flowing from the appellant's negligence and that the failure to wear a crash helmet constituted a failure to discharge that duty; (ii) the quantum of damages awarded to the first respondent represented a wholly erroneous estimate of the amount which ought to have been awarded to him.

Held, dismissing the appeal: (1) in law there can be no duty on a person to minimise the effects or probable consequences of any injury he may suffer, but which he has not yet suffered, through the negligence of another. For a motor cyclist to ride a motor cycle without a crash helmet cannot as a matter of law constitute a failure on his part, acting as a reasonably prudent man would act to foresee that he might cause harm to himself;

(2) having regard to the circumstances of the case the trial judge's estimate of loss of prospective earning was not wholly erroneous and therefore the global award of $115,000 was also not wholly erroneous.

COURT OF APPEAL.

K. E. Hilborne (*M. P. D. Nair* with him) for the appellant.

D. H. Murphy for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The first respondent, who is the first plaintiff in the action, was involved in a collision on the 21st June 1966 with a motor car driven by the appellant, the defendant in the action. At the time of the collision the first respondent was riding a motor-cycle and was not wearing a crash helmet. He was then seventeen and a half years old and in the first year of the Higher School Certificate class in the Arts stream after having obtained a Grade II pass in the Senior Cambridge Examination. In his school report for 1965 his teacher said "Should try for Grade I. Capable of better work".

As a result of the accident he suffered personal injuries. When admitted into hospital shortly after the accident he was in a state of coma, reacting only to pain. He had fractures around the wrist of both arms. An X-ray of the skull revealed no fractures, but although during the next few days his coma became lighter he did not recover consciousness and after ten days he again lapsed into a deep coma. Further tests were made and though no blood clot was found the electro-encephalogram suggested deep-seated brain damage.

The consultant neurologist advised conservative treatment and not brain surgery. A tracheotomy was done for breathing and gastrostomy for feeding. Eighteen days after his admission into hospital he regained consciousness. Twenty six days after the accident the consultant neurologist reported that he was "unable to speak due to motor asphasia and the picture was consistent with vascular involvement of the left side of the brain which was of a degree that although some further improvement would be possible, a residual defect would be likely".

He continued to improve steadily though slowly but when he was discharged from hospital on 3rd August 1966 he was just able to understand speech and to take food by mouth. At that date he weighed about 75 to 80 lbs. as against his pre-accident weight of 120 lbs. and he could not utter a word. For the next few months he had to be spoon fed and a servant had to be employed for the first nine months to look after him and to attend to his needs.

According to his father, after six months he was able to talk about 20 to 25% of his normal self but was unable to read or write. The father had to teach him to read and write and it was like teaching a four year old child. His memory had gone and he had difficulty in remembering what he had been taught. His father work ceaselessly and patiently to rehabilitate him and about eighteen months after the accident sent him to classes run by the Adult Education Board to continue his studies as a student in the Higher School Certificate class. However, as he could not keep up with the class and his work was so bad, the father on the advice of doctors, discontinued his attendance. Since then his father, who is the secretary of the Automobile Association of Singapore, has taken him regularly to the father's office and allowed him to do some typing work on an unpaid basis.

The medical reports of three specialist doctors who examined him show the effect of the head injury. We reproduce these reports hereunder: —

1. " Date 23rd June, 1967.

Re: Chan Swei Yueh,
A 56274

This case was seen by me on 2/7/66 at the request of the 'A' Surgical unit. He had a traffic accident on 21/6/66 and was admitted in coma and remained stuporese.

Examination showed that he was immobile with right hemparesis including face, and further investigation of carotid angiogram and electro-encephalogram was carried out. The angiogram was normal, but the encephalogram showed the presence of a delta rhythm bilaterally, but more persistent on the left temporo-parietal area, suggesting deep-seated brain damage.

He was reassessed on 7/7/66 when he was conscious, and unable to speak due to motor asphasia and the picture was consistent with vascular involvement of the left side of the brain, which was of a degree that although some further improvement would be possible, a residual defect would be likely. As the course was not likely to be affected by surgery, he was advised conservative treatment.

Dr. A. L. Gwee
Senior Physician,
General Hospital,
Singapore 3."

2. *"Specialist Report on Chan Swei Yueh (Orth. 0357/66)*

I would refer you to the specialist report issued by Professor Gunn dated the 25th of January 1967. Further to this report the patient states that he still walks very slowly and is not able to run and he has difficulty in writing fast.

On examination he walks with a very stactic gait, he certainly is not able to run, he has very brisk reflexes in the upper and lower limbs, and there is hypertonicity of all muscle groups. With regard to the fractures of the upper limbs, on the left side supination is limited by approximately forty-five degrees, pronation limited by approximately fifteen degrees, at the left wrist dorsiflexion is full whereas plamarflexion is limited by approximately forty-five degrees. Moreover radial and ulnar deviations are approximately half the normal range. On the right side pronation is limited by twenty degrees and supination is also limited by approximately twenty degrees. The movements of the right wrist appear to be of normal range. The grip in both hands is a little weak. The lower end of the left ulna is dislocated and protruding dorsally and there is slight bowing of the lower forearm on the right side.

OPINION: There is no doubt that this person sustained a severe head injury and as a result of this head injury this patient is now a spastic and will remain a spastic for the rest of his life. This accounts for his inability to run and the slowness of his writing. The function of the forearm is reasonably good in view of his injuries but I feel that excision of the lower end of the ulna on the left side would be indicated in the future. In summarising my opinion is this patient will not show any further recovery. If for the assessment of the cerebral damage which appears not to have affected his intellect but only the muscle co-ordinating centres, you want a specialist opinion I would suggest that you contact a physician.

V. K. Pillay
Acting Head.
Orthopaedic Unit "C",
Outram Road General Hospital,
Singapore 3.

22nd September 1967. "

3. " 20th December, 1968.

Re: Richard Chan Swei Yueh

The previous descriptions by Professor Gunn, and Dr. Cheong June Chao and Dr. Gwee Ah Leng give a clear picture of the case at the time they were written.

It is obvious from the duration of the coma, the alternation of reflexes and the bloody C.S.F. that there had been severe brain damage.

I examined him in February 1968 at the request of Mr. D.W.C. Gawne — Mr. Gawne's letter attached —. At that time he was very unsure of himself and the final outlook was in doubt. Certain physical signs were present which indicated bilateral brain damage. He was slow at night school and his father had to take him away. Since then he has been employed (largely occupational therapy) in his father's office. The father has been very sensible about him and has encouraged him.

On examining Richard Chan on 17.12.68 he had made considerable improvement, was far more confident and he assessed himself as about 80% recovered. He seemed an honest boy, *not unintelligent and is likely to be able to earn a living,* but at a lower level than he would have done had he not had the accident.

He still cannot run and has rather stiff legs. The strength is good. He says he feels the left leg weaker than the right, and the right hand is weaker than the left. There were abnormal reflexes, both in the arms and legs but there was not very much loss of function. The arms and hands: excellent function considering there has been injury. Legs on the whole very good function but rather less so than the upper extremities.

The E.E.G. showed pathological discharges on overbreathing otherwise normal.

I would say that considering that this boy had severe brain damage, he has done very well largely due to the efforts of his father. What handicap there is, is likely to be permanent and it is possible that he may get fits later on. As a result of the accident he has had several years of disability.

G. A. Ransome,
Professor of Medicine,
Outram Road General Hospital,
Singapore 3. "

During the hearing of the action Prof. Pillay, Professor of Orthopaedic Surgery, said he examined the first plaintiff on 8th May 1969 and found his condition still the same with no likelihood of any further improvement. Prof. Ransome, Professor of Medicine, said that in his opinion the first plaintiff was about 30% of his old self with no possibility of any improvement in the brain damage, would never rise above that of a despatch clerk in an office and that it was doubtful if he would get employment in the open market. He may develop epilepsy and his chances of marriage were very slim.

It is convenient at this stage to observe that when the case was called for hearing on 19th May 1969 the defence was confined to a mere denial of negligence and an alternative plea of "unavoidable accident" in that the defendant's "car skided upon the road which was under repairs with the result that he although exercising all due care and skill was unable to avoid a collision". As the hearing could not be completed on 19th May 1969, it was resumed on the 4th June 1969 and at some stage that day counsel for the defendant applied to amend the defence as follows: —

"3A. Further or in the alternative the first plaintiff contributed to the accident by his own negligence by reason of the fact that at the time thereof he was not wearing a crash helmet".

Counsel for the plaintiff not objecting to the application, it was granted and evidence was led that at the time of the accident the first plaintiff was not wearing a crash helmet.

No evidence, however, was led, nor were the medical or other witnesses questioned on behalf of the defendant, either before or after the amended defence, on whether or not, and if so to what extent, the wearing of a crash helmet by the first plaintiff would have resulted in less injury to him.

The trial judge held that the defendant was negligent and dismissed the defence of contributory negligence based on paragraph 3A of the amended defence in the following words: —

"... all that I would say is that there is as yet no statutory regulation requiring motor cyclists to wear crash helmets. The Highway Code is also, I believe, silent on this point. I find no contributory negligence on the part of the first plaintiff for not wearing a crash helmet. The defendant is entirely to be blamed for this accident".

The trial judge then went on to deal with the quantum and awarded a global sum as compensation for the first plaintiff's injuries of $115,000 but indicated that the amount of compensation for the pain and suffering and loss of the amenities of life "should be in the region of between $30,000 and $35,000", and for loss of prospective earnings ought to be based on an average of about $100 per month, and should be in the region of $80,000 to $85,000.

The defendant now appeals on two grounds which are: —

"1. The learned trial judge treated the fact that the first plaintiff was not wearing a crash-helmet at the material time as one relevant only to the issue of culpability whereas it was relevant also to the question of compensation. The learned trial judge ought to have found as a matter of law that there was a duty upon the first plaintiff to mitigate the damages flowing from the defendant's negligence and that, as a matter of fact, the failure to wear crash-helmet constituted a failure to discharge that duty.

2. The quantum of damages awarded to the first plaintiff by the learned trial judge represented a wholly erroneous estimate of the amount which ought to have been awarded to him".

Counsel for the appellant argued the first ground in this way. He submitted, having regard to the fact that we are in Singapore a highly urbanised community and to the present day road conditions in Singapore, that it is unsafe for a motor cyclist and therefore negligent on his part to ride a motor cycle without wearing a crash helmet as a protection from head injury if he is involved in a collision. He contends that in law such a person owes a duty to himself to mitigate the damages he may suffer through the negligence of other users of the road and that, as a matter of fact, the first plaintiff's failure to wear a crash helmet constituted a failure to discharge that duty.

So far as the proposition of law is concerned it is admitted that there is as yet no decided authority in support of it and counsel frankly invited us "to make new law". We are of the opinion, however, that if we accept the proposition put forward by counsel we would be making bad law for in law there can be no duty on a person to minimise the effects or probable consequences of any injury he may suffer, but which he has not as yet suffered, through the negligence of another. The law is clear that just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. In our opinion, for a motor cyclist to ride a motor cycle without wearing protective headgear such as a crash helmet cannot, as a matter of law, constitute a failure on his part, acting as a reasonably prudent man would act, to foresee that he might cause harm to himself. It may well be that a reasonably prudent man would foresee that the wearing of a crash helmet might result in less harm being caused by someone else to him if he is involved in a collision while riding a motor cycle.

In any event, there was no evidence at all before the trial judge that the head injury suffered by the first plaintiff would have been less serious if he had been wearing a crash helmet at the time of the accident. The onus was on the defendant on paragraph 3A of his amended defence to introduce such evidence so as to enable the trial judge to make a finding of fact on this issue.

With regard to the second ground of appeal, counsel for the appellant accepts the trial judge's estimate of between $30,000 and $35,000 for pain and suffering and loss of amenities but contends that the figure of between $80,000 and $85,000 for loss of prospective earnings was so excessive as to amount to a wholly erroneous figure. He relies entirely on awards made by English judges in English courts and submits that on the evidence a more correct figure should be somewhere in the region of $50,000.

We have already set out in full the medical evidence. The trial judge on that and the other evidence before him was of the view that the first plaintiff "would in all probability have ended up in life doing a more responsible and consequently a more lucrative sort of work than that of an ordinary clerk". We accept this assessment and indeed it has not been questioned by the appellant. We also accept, as did the trial judge, Professor Ransome's opinion that as a result of the accident, he would find difficulty in securing the job of even a despatch clerk in the open employment market. It was also never in dispute that his expectation of life was not affected by the injuries he has suffered.

Having regard to all these factors, although each of us would have awarded a lower figure than $80,000 as damages, for loss of prospective earnings, we are unanimous in the view that the trial judge's estimate was not wholly erroneous and that, therefore, the global award of $115,000 was also not wholly erroneous.

For all these reasons, we would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *M. P. D. Nair; Murphy & Dunbar.*

CHUA CHONG CHER v. TEO LANG KEOW & ORS.

[C.A. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah & Chua JJ.) February 9, 1970]

[Singapore — F.C.C.A. No. Y27 of 1969]

Negligence — Finding of fact by trial judge — Not based on demeanour — Duty of appellate court to rehear the case by examining the evidence.

Road Traffic — Accident — Finding of fact — When appellate court may rehear case.

Practice and Procedure — Appeal — Duty of appellate court to rehear case by examining evidence.